

Migration and legal family formats in the UK: Scotland

by Kenneth Norrie ¹

The LawsAndFamilies Database – Aspects of legal family formats for same-sex and different-sex couples

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Based on the [LawsAndFamilies questionnaire](#) on legal family formats for same-sex and/or different-sex couples (Section 4 – Migration)

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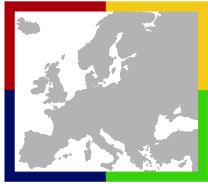
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The six sections of the questionnaire

The [interactive LawsAndFamilies Database](#) is based on the [LawsAndFamilies questionnaire](#), which consists of six sections:

- Section 1 – Formalisation
- Section 2 – Income and troubles
- Section 3 – Parenting
- Section 4 – Migration
- Section 5 – Splitting up
- Section 6 – Death

Papers and an interactive database

For each jurisdiction there are therefore six papers like this one. And each of these papers contains the full answers, references and explanations (given by

a legal expert for the jurisdiction concerned) to the questions in one of these six sections. All these papers can be found in open access at www.LawsAndFamilies.eu. There the user also has access to the [interactive part of the LawsAndFamilies Database](#), which can be used to search the whole database and to create comparative overviews for different questions, different years, different countries and/or different legal family formats.

This website also contains references to publications analysing the results of the project, and to some other legal, sociological and statistical publications about same-sex and different-sex families. And it gives information about the methodology used for this questionnaire and database.

About the questionnaire

The [full text of the questionnaire](#) can be found in the paper:

K. Waaldijk, J.M. Lorenzo Villaverde, N. Nikolina & G. Zago, 'The LawsAndFamilies questionnaire on legal family formats for same-sex and/or different-sex couples: Text of the questions and of the accompanying guidance document', *FamiliesAndSocieties Working Paper* 64(2016), www.familiesandsocieties.eu.

The [Guidance document](#) contained in that paper, asked the experts answering the questionnaire to make several assumptions. These included the assumption that the partners have been living together as a couple already for at least two years. Plus the assumption (except for certain questions in Section 4 – Migration) that both partners have the citizenship of the country where they are now both lawfully and habitually residing, and that this is also the country where their relationship would have been formalised and where it would be dissolved.

About the answers

This paper contains the answers, references and explanations – for one jurisdiction – to all questions in one of the six sections of the questionnaire. The answers are presented in columns. Each column is a coloured timeline, representing legal developments for one question for one legal family format.

The year at the top of each coloured timeline is the most recent year for which a question was answered by the author. In the timelines the years given above and below an answer indicate that the answer applied between a certain day in the lower year and a certain day in the higher year. The year "0000" means that the answer applied since an unknown year before 1965. See further the [Guidance document](#).

The following **answer codes and colours** have been used:

Yes	Yes, this is so in the law of this country/jurisdiction, although possibly with a qualifying period of 24 months or less.
Yes, but	Yes, but with exceptions or restrictions, for example a qualifying period of 25 months or more, or only in most parts of the country/jurisdiction, or this is mostly a “dead letter”.
No, but	No, but it may be so exceptionally, or in a very limited way, or in a few parts of the country/jurisdiction, or indirectly, or by using a different legal instrument, or legislation says no while some courts might say yes.
No	No, this is not so in the law of this country/jurisdiction.
Doubt	The law is unclear (the law does not “know” the answer).
?	No information was available.
N/A	Not applicable (for example because this family format is not available in this jurisdiction, or not for same-sex or different-sex couples).
X	This question was not asked for this legal family format.
Open question	Question without answer codes like Yes and No.
Empty cell	For this year the question was not asked or not answered.

The six papers about Scotland

The answers concerning Scotland can be found in the [interactive database](#) and in the following six papers (all of which are published in open access in: K. Waaldijk et al. (eds.), *The LawsAndFamilies Database – Aspects of legal family formats for same-sex and different-sex couples*, Paris: INED, 2017, www.LawsAndFamilies.eu):

Formalisation of legal family formats in the UK: Scotland by Kenneth Norrie (Section 1)

Income, troubles and legal family formats in the UK: Scotland by Kenneth Norrie (Section 2)

Parenting and legal family formats in the UK: Scotland by Kenneth Norrie (Section 3)

Migration and legal family formats in the UK: Scotland by Kenneth Norrie (Section 4)

Splitting up and legal family formats in the UK: Scotland by Kenneth Norrie (Section 5)

Death and legal family formats in the UK: Scotland by Kenneth Norrie (Section 6)

So this paper is based on **Section 4 (Migration)** of the [LawsAndFamilies questionnaire](#), which contains questions about the following topics:

- 4.1 Partner of national citizen
- 4.2 Partner of national citizen (foreign status)
- 4.3 Partner of (non-EU) foreigner
- 4.4 Partner of EU citizen (foreign status)
- 4.5 Foreign status as impediment to marry
- 4.6 Foreign status and inheritance
- 4.7 Citizenship
- 4.8 Recognition of joint adoption
- 4.9 Recognition of second-parent adoption
- 4.10 General background regarding migration

In the following pages of this paper, first the answer to question 4.10 is presented, followed by the answers to questions 4.1 to 4.9.

**4.10 - General background regarding migration
(Open question)**

If you consider it useful to provide some general information or comments about (past, present or future) developments and trends in legal policy and case law in your country/jurisdiction, or information on other aspects (socio-legal, political, legal-cultural, etc.) that may be relevant for the understanding your answers above regarding migration, then please do so here.

Many of the rights to migration in the United Kingdom are traced to EU Directives. On June 23, 2016, the United Kingdom voted in a referendum and narrowly (52 - 48%) decided to leave the European Union. Scotland, however, voted 62 - 38% to remain a member of the European Union (as did, by a smaller majority, Northern Ireland). The Scottish Government subsequently announced that it would do everything it could to maintain Scotland's membership of the EU, and with that the free movement protections thereby guaranteed: if the only way to achieve that was to remove Scotland as a constituent element of the "United" Kingdom then that is what the Scottish Government will seek to do. At the moment, however, all rights and responsibilities in Scots law traced to EU law are vulnerable.

Jurisdiction: **UK: Scotland**

Source: K. Norrie, "Migration and legal family formats in UK: Scotland". In: K. Waaldijk et al. (eds.), *The LawsAndFamilies Database – Aspects of legal family formats for same-sex and different-sex couples*. Paris: INED, 2017, www.LawsAndFamilies.eu, [LawsAndFamilies-UK_SC-Section4.pdf](#) (please use this full citation when citing any information from this table).

Section: **4 - Migration**

Question: **4.01 - Partner of national citizen**

When one partner is a residing national citizen, while the other is a foreigner from another continent, will the foreign partner then have a residence entitlement/eligibility?

(Please assume that they married/registered/cohabited in the country where they now want to reside. As to the meaning of 'residing', see section c of the [Guidance for experts answering questions in the questionnaire](#).)

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2016 Yes 0000	2016 Yes 2014	2016 N/A 0000	2016 Yes 2005	2016 Yes 2000	2016 Yes 2000
	N/A 0000		N/A 0000	No, but 0000	No, but 0000
<p>References to legal sources: British Nationality Act 1981.</p> <p>Asylum and Immigration Act 1996.</p> <p>UK Immigration Rules: accessible from www.gov.uk/guidance/immigration-rules.</p>		<p>References to legal sources: British Nationality Act 1981.</p> <p>Asylum and Immigration Act 1996.</p> <p>UK Immigration Rules: accessible from www.gov.uk/guidance/immigration-rules.</p>		<p>References to legal sources: British Nationality Act 1981.</p> <p>Asylum and Immigration Act 1996.</p> <p>UK Immigration Rules: accessible from www.gov.uk/guidance/immigration-rules.</p>	

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p>Explanations and nuances: Paragraph 281 of the Immigration Rules sets out the requirements for leave of a spouse of a UK citizen to enter the UK and remain for an initial period. This initial period may be extended under paragraphs 285 and 287 and indefinite leave to remain will be granted so long as the requirements in paragraph 287 have been met. These rules have always applied to spouses, and apply to same-sex spouses since 2014.</p>		<p>Explanations and nuances: Paragraph 281 of the Immigration Rules sets out the requirements for leave of a civil partner of a UK citizen to enter the UK and remain for an initial period. This period may be extended under paragraphs 285 and 287 and indefinite leave to remain will be granted so long as the requirements in paragraph 287 have been met.</p>		<p>Explanations and nuances: Prior to 2000, unmarried cohabitants had no entitlement to enter and reside in the UK, but could be granted this on a discretionary basis. Since 2000, "unmarried or same-sex partners" have a right to enter and reside in the UK, on satisfaction of the conditions set out in paragraph 295A of the Immigration Rules. Temporary leave is governed by paragraph 295E and indefinite leave by paragraph 295H.</p>	

Jurisdiction: **UK: Scotland**

Source: K. Norrie, "Migration and legal family formats in UK: Scotland". In: K. Waaldijk et al. (eds.), *The LawsAndFamilies Database – Aspects of legal family formats for same-sex and different-sex couples*. Paris: INED, 2017, www.LawsAndFamilies.eu, [LawsAndFamilies-UK_SC-Section4.pdf](#) (please use this full citation when citing any information from this table).

Section: **4 - Migration**

Question: **4.02 - Partner of national citizen (foreign status)**

When one partner is a residing national citizen, while the other partner is a foreigner from another continent, and this couple married/registered in the country of the foreigner, will the foreign partner then have a residence entitlement/eligibility?

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2016 Yes 0000	2016 Yes 2014	2016 Yes, but 2000	2016 Yes 2005	X	X
	Yes, but 2001	No, but 1998	Yes, but 2000	X	X
	N/A 0000	N/A 0000	No, but 1989	X	X
			N/A 0000	X	X

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p>References to legal sources: British Nationality Act 1981.</p> <p>Asylum and Immigration Act 1996.</p> <p>UK Immigration Rules: accessible from www.gov.uk/guidance/immigration-rules.</p>		<p>References to legal sources: British Nationality Act 1981.</p> <p>Asylum and Immigration Act 1996.</p> <p>UK Immigration Rules: accessible from www.gov.uk/guidance/immigration-rules.</p>			
<p>Explanations and nuances: Paragraph 281 of the Immigration Rules sets out the requirements for leave of a spouse of a UK citizen to enter the UK and remain for an initial period. This period may be extended under paragraphs 285 and 287 and indefinite leave to remain will be granted so long as the requirements in paragraph 287 have been met. These rules will apply so long as the marriage conducted abroad is valid.</p> <p>Before the couple were recognised in any sense (as civil partners under the Civil Partnership Act 2004 or as married under the Marriage and Civil Partnership (Scotland) Act 2014) they would have to rely on being treated as cohabitants (for which see question 4.1 above).</p>		<p>Explanations and nuances: Paragraph 281 of the Immigration Rules sets out the requirements for leave of a civil partner of a UK citizen to enter the UK and remain for an initial period. This period may be extended under paragraphs 285 and 287 and indefinite leave to remain will be granted so long as the requirements in paragraph 287 have been met. These rules will apply so long as the civil partnership created abroad is valid.</p> <p>Opposite-sex civil partners will have to rely on being treated as cohabitants (for which see question 4.1 above).</p>			

Jurisdiction: **UK: Scotland**

Source: K. Norrie, "Migration and legal family formats in UK: Scotland". In: K. Waaldijk et al. (eds.), *The LawsAndFamilies Database – Aspects of legal family formats for same-sex and different-sex couples*. Paris: INED, 2017, www.LawsAndFamilies.eu, [LawsAndFamilies-UK_SC-Section4.pdf](#) (please use this full citation when citing any information from this table).

Section: **4 - Migration**

Question: **4.03 - Partner of (non-EU) foreigner**

When both partners are foreigners from another continent, and one of them is residing in the country, will the other partner then have a residence entitlement/eligibility?

(Please assume that they married/registered/cohabited in the country where they now want to reside.)

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2016 Yes, but 0000	2016 Yes, but 2014	2016 N/A 0000	2016 Yes, but 2005	2016 Yes, but 2000	2016 Yes, but 2000
	N/A 0000		N/A 0000	No, but 0000	No, but 0000

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p>References to legal sources: British Nationality Act 1981.</p> <p>Asylum and Immigration Act 1996.</p> <p>UK Immigration Rules: accessible from www.gov.uk/guidance/immigration-rules.</p> <p>Re Gouday (Subsisting Marriage - Evidence) Sudan [2012] UKUT 41 (UK Upper Tribunal (Immigration and Asylum Chamber) 13 January 2012 R (Aguilar Quila and Another) v Secretary of State for the Home Department [2011] UKSC 45 (UK Supreme Court 12 October 2011).</p> <p>LS (Iran) v Secretary of State for the Home Department [2007] UK AIT 72 (UK Asylum and Immigration Tribunal 25 May 2007).</p>		<p>References to legal sources: British Nationality Act 1981.</p> <p>Asylum and Immigration Act 1996.</p> <p>UK Immigration Rules: accessible from www.gov.uk/guidance/immigration-rules.</p>		<p>References to legal sources: British Nationality Act 1981.</p> <p>Asylum and Immigration Act 1996.</p> <p>UK Immigration Rules: accessible from www.gov.uk/guidance/immigration-rules.</p>	
<p>Explanations and nuances: The same rules apply to the spouses of foreigners from another continent as apply to spouses of UK citizens (see question 4.1), so long as the spouse residing in the UK has been granted indefinite leave to remain.</p>		<p>Explanations and nuances: The same rules apply to the civil partners of foreigners from another continent as apply to civil partners of UK citizens (see question 4.1), so long as the partner residing in the UK has been granted indefinite leave to remain.</p>		<p>Explanations and nuances: The same rules apply to the unregistered partners of foreigners from another continent as apply to unmarried and same-sex partners of UK citizens (see question 4.1), so long as the partner residing in the UK has been granted indefinite leave to remain.</p>	

Jurisdiction: **UK: Scotland**

Source: K. Norrie, "Migration and legal family formats in UK: Scotland". In: K. Waaldijk et al. (eds.), *The LawsAndFamilies Database – Aspects of legal family formats for same-sex and different-sex couples*. Paris: INED, 2017, www.LawsAndFamilies.eu, [LawsAndFamilies-UK_SC-Section4.pdf](#) (please use this full citation when citing any information from this table).

Section: **4 - Migration**

Question: **4.04 - Partner of EU citizen (foreign status)**

When one partner is a foreign EU citizen who is residing in the country, while the other is a foreigner from another continent, and this couple married/registered/cohabited in the country of the EU citizen, will the non-EU partner then have a residence entitlement/eligibility?

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2016 Yes 2004	2016 Yes 2014	2016 Yes, but 2000	2016 Yes 2005	2016 Yes 2004	2016 Yes 2004
Yes, but 1973	Yes, but 2001	No, but 1998	Yes, but 2000	Yes, but 2000	Yes, but 2000
? 0000	N/A 0000	N/A 0000	No, but 1989	No, but 0000	No, but 0000
			N/A 0000		

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p>References to legal sources: EEC Regulation 1612/68.</p> <p>British Nationality Act 1981.</p> <p>Asylum and Immigration Act 1996.</p> <p>UK Immigration Rules: accessible from www.gov.uk/governmental/collection/immigration-rulesDirective2004/38/EC.</p>		<p>References to legal sources: British Nationality Act 1981.</p> <p>Asylum and Immigration Act 1996.</p> <p>UK Immigration Rules: accessible from www.gov.uk/guidance/immigration-rulesDirective2004/38/EC.</p>		<p>References to legal sources: British Nationality Act 1981.</p> <p>Asylum and Immigration Act 1996.</p> <p>UK Immigration Rules: accessible from www.gov.uk/guidance/immigration-rulesDirective2004/38/EC.</p>	
<p>Explanations and nuances: The spouse of a non-British EU national who has a right to reside in the UK will be allowed to reside in the UK as a "family member" of an EU citizen under Directive 2004/38/EC. Article 2(2) includes "spouse" within the definition of "family member".</p> <p>EEC Regulation 1612/68 allowed EU citizens working in another member state to be accompanied by their spouse: this has applied since the United Kingdom joined what is now the European Union in 1973.</p> <p>See also question 4.2.</p> <p>The UK will leave the EU and the future looks bleak for this and all other rights traced to EU law. Scotland voted overwhelmingly to remain in the EU and the Scottish Government is committed to finding a way to do so (including potential independence from the other constituent parts of the "United" Kingdom).</p>		<p>Explanations and nuances: The civil partner of a non-British EU national who has a right to reside in the UK will be allowed to reside in the UK as a "family member" of an EU citizen under Directive 2004/38/EC. Article 2(2) includes "partner with whom the Union citizen has contracted a registered partnership" so long as registered partnership is treated as equivalent to marriage (which, in the UK, it is).</p> <p>See also question 4.2.</p>		<p>Explanations and nuances: Cohabitants of non-British EU citizens will be allowed to reside in the UK if they are partners "with whom the Union citizen has a durable relationship, duly attested": Directive 2004/38/EU, art 3(2).</p> <p>For the situation before 2004, see question 4.3.</p>	

Jurisdiction: **UK: Scotland**

Source: K. Norrie, "Migration and legal family formats in UK: Scotland". In: K. Waaldijk et al. (eds.), *The LawsAndFamilies Database – Aspects of legal family formats for same-sex and different-sex couples*. Paris: INED, 2017, www.LawsAndFamilies.eu, [LawsAndFamilies-UK_SC-Section4.pdf](#) (please use this full citation when citing any information from this table).

Section: **4 - Migration**

Question: **4.05 - Foreign status as impediment to marry**

When the couple got married or registered abroad, will this relationship then be recognised as an impediment to marry someone else?

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2016 Yes 0000	2016 Yes 2005	2016 Doubt 1998	2016 Yes 2005	X	X
	Doubt 2001	N/A 0000	Doubt 1989	X	X
	N/A 0000		N/A 0000	X	X
References to legal sources: Marriage (Scotland) Act 1977, art. 5(4)(f).		References to legal sources: Marriage (Scotland) Act 1977, art. 5(4)(f). Civil Partnership Act 2004, arts. 212-215.			

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p>Explanations and nuances: A marriage contracted abroad will be recognised in Scotland, so long as the formalities of the country where the marriage took place are satisfied AND the parties both had capacity to marry according to their own ante-nuptial domiciles. If these conditions are satisfied for an opposite-sex couple, their marriage will be recognised in Scotland and will create an impediment to either party marrying (or registering a civil partnership with) someone else in Scotland.</p> <p>The question of same-sex marriage recognition did not come before the courts before the Civil Partnership Act 2004, which converted valid foreign same-sex marriages into UK civil partnerships: that conversion created an impediment to marrying (or registering a civil partnership with) someone else. But prior to the coming into force of the 2004 Act it was unknown whether the Scottish courts would recognise a foreign same-sex marriage as a marriage.</p>		<p>Explanations and nuances: A civil partnership registered abroad will be recognised in Scotland, so long as the formalities of the country where the registration took place are satisfied, and the parties are eligible to register by that law (including its rules of private international law). If these conditions are satisfied for a same-sex couple, their civil partnership will be recognised in Scotland and will create an impediment to either party registering a civil partnership with (or marrying) someone else in Scotland. Art 216 of the 2004 Act, however, prevents a different-sex registered partnership from being recognised for any purpose in the UK - but it might be argued that this foreign status amounts to a domiciliary incapacity which will amount to an impediment to marriage under the 1977 Act notwithstanding the terms of the 2004 Act.</p>			

Jurisdiction: **UK: Scotland**

Source: K. Norrie, "Migration and legal family formats in UK: Scotland". In: K. Waaldijk et al. (eds.), *The LawsAndFamilies Database – Aspects of legal family formats for same-sex and different-sex couples*. Paris: INED, 2017, www.LawsAndFamilies.eu, [LawsAndFamilies-UK_SC-Section4.pdf](#) (please use this full citation when citing any information from this table).

Section: **4 - Migration**

Question: **4.06 - Foreign status and inheritance**

When the couple got married or registered abroad, will this relationship then be recognised as regards inheritance in the absence of a testament?

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2016 Yes 0000	2016 Yes, but 2014	2016 Doubt 1998	2016 Yes, but 2005	X	X
	Yes, but 2005	N/A 0000	Doubt 1989	X	X
	Doubt 2001		N/A 0000	X	X
	N/A 0000			X	X
References to legal sources:		References to legal sources: Civil Partnership Act 2004, art. 131 and art. 216.			

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p>Explanations and nuances: So long as the marriage contracted abroad is recognised as valid in Scotland (that is to say when the formalities of the country where the marriage took place are satisfied AND the parties both had capacity to marry according to their own ante-nuptial domiciles) then the marriage will affect the parties' intestate inheritance rules (so long as the intestacy is governed by Scots law). So for example the surviving spouse will, if the deceased died intestate, be able to claim "prior rights" (an amount from the estate up to a stated value) and "legal rights" (a percentage of the remaining moveable estate). But succession to immoveables may be governed by the law of the situs of the property even when the deceased was domiciled in Scotland and the law of the situs may have different rules for inheritance - or may refuse on public policy grounds to recognise a same-sex marriage.</p> <p>Prior to 2005 (when the Civil Partnership Act 2004 came into force) a foreign same-sex marriage probably would not be recognised for succession purposes governed by Scots law but succession to immoveables might be governed by the law of the situs and if that law gave effect to the marriage then Scots law would be unlikely to utilise public policy arguments to avoid that result. After 2005 foreign same-sex marriages were treated as civil partnerships and had succession consequences; after 2014 foreign same-sex marriages are treated in Scotland as marriages and have succession consequences. But again the lex situs might be given effect to and that law might refuse to recognise the same-sex marriage.</p>		<p>Explanations and nuances: Art. 216 of the 2004 Act prevents a different-sex registered partnership from being recognised in the UK for any purpose. But it could be argued that with succession to immoveables the rules of the lex situs, which might recognise the relationship, applies: if so inheritance will be affected even if the relationship is not formally recognised.</p> <p>A same-sex civil partnership registered abroad will be recognised in Scotland (so long as the formalities of the country where the registration took place are satisfied, and the parties are eligible to register by that law, including its rules of private international law). A valid civil partnership will affect the parties' intestate inheritance rules. So for example the surviving civil partner will, if the deceased died intestate, be able to claim "prior rights" (an amount from the estate up to a stated value) and "legal rights" (a percentage of the remaining moveable estate). But succession to immoveables may be governed by the law of the situs of the property even when the deceased was domiciled in Scotland and the law of the situs may have different rules for inheritance - or may refuse on public policy grounds to recognise a same-sex civil partnership.</p>			

Jurisdiction: **UK: Scotland**

Source: K. Norrie, "Migration and legal family formats in UK: Scotland". In: K. Waaldijk et al. (eds.), *The LawsAndFamilies Database – Aspects of legal family formats for same-sex and different-sex couples*. Paris: INED, 2017, www.LawsAndFamilies.eu, [LawsAndFamilies-UK_SC-Section4.pdf](#) (please use this full citation when citing any information from this table).

Section: **4 - Migration**

Question: **4.07 - Citizenship**

Does a relationship of this type make it easier for a foreign partner to obtain citizenship?

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2016 Yes 0000	2016 Yes 2014	2016 N/A 0000	2016 Yes 2005	2016 No 0000	2016 No 0000
	N/A 0000		N/A 0000		
References to legal sources: British Nationality Act 1981, Schedule 1.		References to legal sources: British Nationality Act 1981, Schedule 1.		References to legal sources: British Nationality Act 1981, Schedule. 1.	
Explanations and nuances: If a spouse who is not a British citizen marries a citizen, they may apply for naturalisation (see article 6 of the British Nationality Act 1981). However, unlike others seeking citizenship, they are required to be in the UK for three years as opposed to five. Therefore marriage makes it easier for a foreign partner to obtain citizenship.		Explanations and nuances: If an individual who is not a British citizen forms a civil partnership with a citizen, they may apply for naturalisation (see article 6 of the British Nationality Act 1981). However, unlike others seeking citizenship, they are required to be in the UK for three years as opposed to five. Therefore civil partnership makes it easier for a foreign partner to obtain citizenship.		Explanations and nuances: An individual who is not married or in a civil partnership can apply for citizenship through naturalisation, but the process is longer and greater evidence of permanence and stability of the cohabiting relationship is required.	

Jurisdiction: **UK: Scotland**

Source: K. Norrie, "Migration and legal family formats in UK: Scotland". In: K. Waaldijk et al. (eds.), *The LawsAndFamilies Database – Aspects of legal family formats for same-sex and different-sex couples*. Paris: INED, 2017, www.LawsAndFamilies.eu, [LawsAndFamilies-UK_SC-Section4.pdf](#) (please use this full citation when citing any information from this table).

Section: **4 - Migration**

Question: **4.08 - Recognition of joint adoption**

When the partners have jointly adopted a child while residing abroad, will that foreign adoption then be recognised as regards legal parenthood?

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2016 Yes, but 0000	2016 Yes, but 2014	2016 N/A 0000	2016 Yes, but 2005	2016 Yes, but 0000	2016 Yes, but 1997
	N/A 0000		N/A 0000		? 0000
<p>References to legal sources: Adoption (Designation of Overseas Adoptions) Order 1973 (SI 1973/19). Hague Convention on Intercountry Adoption 1993. Adoption and Children (Scotland) Act 2007. Adoptions with a Foreign Element (Scotland) Regulations 2009 (SSI 2009/182). Adoptions with a Foreign Element (Special Restrictions on Adoptions from Abroad) (Scotland) Regulations 2008 (SSI 2008/303). Brown, Petitioner 2015 Scots Law Times 378 (Court of Session, Outer House, 4 June 2015).</p>		<p>References to legal sources: Adoption (Designation of Overseas Adoptions) Order 1973 (SI 1973/19). Hague Convention on Intercountry Adoption 1993. Adoption and Children (Scotland) Act 2007. Adoptions with a Foreign Element (Scotland) Regulations 2009 (SSI 2009/182). Adoptions with a Foreign Element (Special Restrictions on Adoptions from Abroad) (Scotland) Regulations 2008 (SSI 2008/303).</p>		<p>References to legal sources: Adoption (Designation of Overseas Adoptions) Order 1973 (SI 1973/19). Hague Convention on Intercountry Adoption 1993. Adoption and Children (Scotland) Act 2007. Adoptions with a Foreign Element (Scotland) Regulations 2009 (SSI 2009/182). Adoptions with a Foreign Element (Special Restrictions on Adoptions from Abroad) (Scotland) Regulations 2008 (SSI 2008/303). T, Petitioner 1997 Scots Law Times 724 (Court of Session, Inner House).</p>	

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p>Explanations and nuances: Recognition of foreign adoptions is governed by a complex mix of legal provisions, primarily depending upon in which country the adoption order was made. Some countries are specified as countries whose adoption orders will not be recognised at all. There is a common law power on the court to refuse to recognise an adoption if contrary to public policy, and the Hague Convention on Intercountry Adoption 1993 allows refusal of recognition by one contracting state of the adoption orders of another contracting state if recognition would be manifestly contrary to the public policy of the state asked to grant recognition. The conditions for recognition do not otherwise focus on the relationship status of the joint adopters.</p>		<p>Explanations and nuances: Recognition of foreign adoptions is governed by a complex mix of legal provisions, primarily depending upon in which country the adoption order was made. Some countries are specified as countries whose adoption orders will not be recognised at all. There is a common law power on the court to refuse to recognise an adoption if contrary to public policy, and the Hague Convention on Intercountry Adoption 1993 allows refusal of recognition by one contracting state of the adoption orders of another contracting state if recognition would be manifestly contrary to the public policy of the state asked to grant recognition. The conditions for recognition do not otherwise focus on the relationship status of the joint adopters. By 2005, when civil partnership was introduced in Scotland by UK legislation, it could not have been argued that to recognise a foreign adoption by a same-sex couple would be contrary to public policy - for same-sex couple adoption was by then permitted in England and would be permitted in Scotland four years later.</p>		<p>Explanations and nuances: Recognition of foreign adoptions is governed by a complex mix of legal provisions, primarily depending upon in which country the adoption order was made. Some countries are specified as countries whose adoption orders will not be recognised at all. There is a common law power on the court to refuse to recognise an adoption if contrary to public policy, and the Hague Convention on Intercountry Adoption 1993 allows refusal of recognition by one contracting state of the adoption orders of another contracting state if recognition would be manifestly contrary to the public policy of the state asked to grant recognition. The conditions for recognition do not otherwise focus on the relationship status of the joint adopters. No argument was ever raised that the (opposite-sex) joint adopters being unmarried was a public policy reason to refuse to recognise the otherwise valid overseas adoption; and Public policy would not prevent a second parent adoption being recognised between opposite-sex cohabitants, and the same result probably follows for same-sex cohabitants since at least 1997. In that year the Court of Session rejected the argument (in a domestic adoption case) that there was any public policy reason to prevent a gay man living in a relationship with another man from adopting a child. If that is so, it would have been difficult to argue that there was any public policy reasons to prevent the recognition of a foreign adoption by a same-sex couple that would otherwise be recognisable under the legal provisions and international agreements mentioned above. If there was any doubt on the matter (which in truth there was not) that doubt was removed in 2005 when English law permitted same-sex couples to adopt jointly (four years before this was permitted in Scots law), for English adoptions are automatically recognised in Scotland and so the public policy argument could not prevent recognition of foreign adoptions identical to those permitted in England and Wales.</p> <p>Prior to the Court of Session's decision in T, Petitioner in 1997 it was at least arguable that it would be contrary to public policy to recognise a foreign adoption by a same-sex couple, but the matter was never raised in a Scottish court.</p>	

Jurisdiction: **UK: Scotland**

Source: K. Norrie, "Migration and legal family formats in UK: Scotland". In: K. Waaldijk et al. (eds.), *The LawsAndFamilies Database – Aspects of legal family formats for same-sex and different-sex couples*. Paris: INED, 2017, www.LawsAndFamilies.eu, [LawsAndFamilies-UK_SC-Section4.pdf](#) (please use this full citation when citing any information from this table).

Section: **4 - Migration**

Question: **4.09 - Recognition of second-parent adoption**

When one partner has become the second parent of a child of the other partner, by way of adoption while the partners were residing abroad, will that foreign adoption then be recognised as regards legal parenthood?

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2016 Yes, but 0000	2016 Yes, but 2014	2016 N/A 0000	2016 Yes, but 2005	2016 Yes, but 0000	2016 Yes, but 1997
	N/A 0000		N/A 0000		? 0000
<p>References to legal sources: Adoption (Designation of Overseas Adoptions) Order 1973 (SI 1973/19). Hague Convention on Intercountry Adoption 1993. Adoption and Children (Scotland) Act 2007. Adoptions with a Foreign Element (Scotland) Regulations 2009 (SSI 2009/182). Adoptions with a Foreign Element (Special Restrictions on Adoptions from Abroad) (Scotland) Regulations 2008 (SSI 2008/303).</p>		<p>References to legal sources: Adoption (Designation of Overseas Adoptions) Order 1973 (SI 1973/19). Hague Convention on Intercountry Adoption 1993. Adoption and Children (Scotland) Act 2007. Adoptions with a Foreign Element (Scotland) Regulations 2009 (SSI 2009/182). Adoptions with a Foreign Element (Special Restrictions on Adoptions from Abroad) (Scotland) Regulations 2008 (SSI 2008/303).</p>		<p>References to legal sources: Adoption (Designation of Overseas Adoptions) Order 1973 (SI 1973/19). Hague Convention on Intercountry Adoption 1993. Adoption and Children (Scotland) Act 2007. Adoptions with a Foreign Element (Scotland) Regulations 2009 (SSI 2009/182). Adoptions with a Foreign Element (Special Restrictions on Adoptions from Abroad) (Scotland) Regulations 2008 (SSI 2008/303). T, Petitioner 1997 Scots Law Times 724 (Court of Session, Inner House).</p>	

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p>Explanations and nuances: Recognition of foreign adoption orders is governed by a complex mix of legal provisions, primarily depending upon in which country the adoption order was made. Some countries are specified as countries whose adoption orders will not be recognised at all. Whether a second parent adoption is recognised will therefore depend on the country the order was made in and not whether the relationship between the parents is recognised or follows a particular form. There is a common law power on the court to refuse to recognise an adoption if contrary to public policy, and the Hague Convention on Intercountry Adoption 1993 allows refusal of recognition by one contracting state of the adoption orders of another contracting state if recognition would be manifestly contrary to the public policy of the state asked to grant recognition. Public policy would never prevent a second parent adoption being recognised between married couples.</p>		<p>Explanations and nuances: Recognition of foreign adoption orders is governed by a complex mix of legal provisions, primarily depending upon in which country the adoption order was made. Some countries are specified as countries whose adoption orders will not be recognised at all. Whether a second parent adoption is recognised will therefore depend on the country the order was made in and not whether the relationship between the parents is recognised or follows a particular form. There is a common law power on the court to refuse to recognise an adoption if contrary to public policy, and the Hague Convention on Intercountry Adoption 1993 allows refusal of recognition by one contracting state of the adoption orders of another contracting state if recognition would be manifestly contrary to the public policy of the state asked to grant recognition. Public policy would never prevent a second parent adoption being recognised between civil partners.</p>		<p>Explanations and nuances: Recognition of foreign adoption orders is governed by a complex mix of legal provisions, primarily depending upon in which country the adoption order was made. Some countries are specified as countries whose adoption orders will not be recognised at all. Whether a second parent adoption is recognised will therefore depend on the country the order was made in and not whether the relationship between the parents is recognised or follows a particular form. There is a common law power on the court to refuse to recognise an adoption if contrary to public policy, and the Hague Convention on Intercountry Adoption 1993 allows refusal of recognition by one contracting state of the adoption orders of another contracting state if recognition would be manifestly contrary to the public policy of the state asked to grant recognition. Public policy would not prevent a second parent adoption being recognised between opposite-sex cohabitants, and the same result probably follows for same-sex cohabitants since at least 1997. In that year the Court of Session rejected the argument (in a domestic adoption case) that there was any public policy reason to prevent a gay man living in a relationship with another man from adopting a child. If that is so, it would have been difficult to argue that there was any public policy reasons to prevent the recognition of a foreign second parent adoption by the same-sex partner of the parent otherwise recognisable under the legal provisions and international agreements mentioned above. If there was any doubt on the matter (which in truth there was not) that doubt was removed in 2005 when English law permitted same-sex couples to adopt jointly (four years before this was permitted in Scots law), for English adoptions are automatically recognised in Scotland and so the public policy argument could not prevent recognition of foreign adoptions identical to those permitted in England and Wales.</p> <p>Prior to the Court of Session's decision in T, Petitioner in 1997 it was at least arguable that it would be contrary to public policy to recognise a foreign second parent adoption by the same-sex partner of a parent, but the matter was never raised in a Scottish court.</p>	